



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

[REDACTED]

PRELIMINARY RECITALS

Pursuant to a petition filed May 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 15, 2015, at Menomonie, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for occupational therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney Michael J. Fairchild
508 Wilson Ave
[REDACTED]-2480

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Dunn County.

2. On March 10, 2015, the petitioner with [REDACTED] requested 52 weekly one-hour sessions of occupational therapy at a cost of \$7,176. [REDACTED] submitted a revised request at the Office of Inspector General's request on March 31, 2015. The office denied the request on April 23, 2015.
3. The petitioner is a 12-year-old boy diagnosed with ADHD, autism, neurofibromatosis (type 1), and lack of coordination.
4. The petitioner scores on the Bruininks-Oseretsky Test of Motor Proficiency indicated he was "below average" in fine motor integration, manual dexterity, upper limb coordination, and manual coordination. That test indicated that he was well below average in fine motor precision and fine manual control.
5. The petitioner receives 30 minutes of occupational therapy each week through his school district. His Individualized Education Plan includes the following goals and objectives:
- a. [Petitioner] will improve functional handwriting skills as measured by the following benchmarks:
 - i. [Petitioner] will legibly sign his name 100% of given opportunities.
 - ii. [Petitioner] will write his address and phone number accurately 80% of opportunities.
 - b. [Petitioner] will increase his reading skills to a level that will allow him to be successful in a general education setting. Through use of effective reading strategies such as establishing purpose, predicting, self correcting from context cues, re-reading for meaning, and applying prior knowledge, [Petitioner] will answer comprehension questions with 75% accuracy for nonfiction text written at his independent reading level.
 - c. [Petitioner] will increase his social communication skills to a level that will allow him to succeed in a general education setting. [He] will raise his hand before speaking in $\frac{3}{4}$ occasions. [He] will have the appropriate interactions with peers, respecting space, and acting on peer's cues (verbal and nonverbal) 100% of the time.
6. [REDACTED]'s first long-term goal for the petitioner is that he "will demonstrate improved focus, ability to follow directions, transitions during daily activities to increase age appropriate participation." Her short-term goals for him in this area are:
- a. [He] will attend to a non-preferred task, to facilitate in-home and community participation, for at least 10 minutes with minimal cues.
 - b. [He] will follow a 3-step task to facilitate following routines with one verbal and visual cue.
 - c. [He] will transition from a preferred activity to a non-preferred activity in order to participate in home and community routines with one verbal and visual cue.
7. [REDACTED]'s second long-term goal for the petitioner is that he "will demonstrate improved body coordination to keep up with peers and to engage in age appropriate self-care activities." Her short-term goal for him in this area is that he "will demonstrate improved strength for age appropriate movement activities by standing on one leg for 5 seconds on 3 of 5 trials."
8. [REDACTED]'s proposed treatment for the petitioner includes sensorimotor techniques.
9. The only contact between [REDACTED] and the school's occupational therapist was a telephone call by [REDACTED] on March 27, 2015. There is no evidence that either provider adjusted her proposed therapy to account for what the other was doing.

DISCUSSION

Medical assistance covers occupational therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code, § DHS 107.17(2)(b). When determining whether a service is necessary, the Division must review, among other things, whether the service is medical necessary, the appropriateness of the service, the cost of the service, and the effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e). “Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 - 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 - 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 - 3. Is appropriate with regard to generally accepted standards of medical practice;
 - 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 - 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 - 6. Is not duplicative with respect to other services being provided to the recipient;
 - 7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
 - 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 - 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m)

The petitioner’s primary diagnoses are autism and ADHD. In addition, his provider indicates he lacks coordination. Besides the requested private therapy, he receives therapy through his school district. Both therapies seek to treat some of the common symptoms of autism such as not reading social and verbal cues, having proper interaction with his peers, and exercising discipline. To prevent requested private services from duplicating those a child receives through his school district, the department requires that the two providers coordinate their services:

A member who receives SBS [school-based services] may also receives (sic) PT, OT, and SLP services that are not a part of the SBS. PT, OT, and SLP providers are required to coordinate evaluations and services with SBS providers. PT, OT, and SLP providers, along with SBS providers, are required to communicate with each (sic) other at least once a year. SBS providers are required to cooperate with PT, OT, and SLP providers who request copies of the child's IEP or components of the IEP team evaluation.

Online Provider Handbook, Topic 2784 (Coordination with School Based Services Providers)
<https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=87&s=1&c=4>

Coordination involves more than calling the other provider and letting her know that you are also providing services. It requires actually conferring with the other provider, exchanging ideas, and determining what services each will provide so that the services do not duplicate each other, which would

██████████ waste the public resources used to fund those services. In this case, it appears that there was no communication between ██████████ and the school therapist until the Office of Inspector General returned the original request and asked for evidence of coordination. ██████████ then indicated that she had called the school therapist. But there is no evidence that anything meaningful came from this conversation. Although ██████████ did modify her original request, it does not appear that any part of the modification occurred because she was taking into account the services provided by the school therapist. Instead, it appears that the phone call was meant only to demonstrate some minimal compliance with *Topic 2784* by crossing a point off from the provider's to-do list. This is inadequate because there is no evidence that it led to any coordination.

It also appears that at least a portion of the requested services do not have proven medical value or usefulness. ██████████ indicated that sensory techniques would be used to treat the petitioner. Medical assistance covers sensory integration as part of occupational therapy, but Wis. Admin. Code, § 107.02(2)(b) allows the department to bar payment for "medically unnecessary" and "inappropriate" services. Using this authority, it held in *Final Decision No. MPA-65/111878* that it cannot cover sensory techniques to treat those with autism. The Department's final decisions are binding on administrative law judges, meaning that the judges must follow those decisions.

The request also includes therapy that is meant to improve the petitioner's coordination. Because this portion of the therapy is not related to his autism or the therapy he receives through his school district, it will be reviewed separately. ██████████ has shown through some standardized testing that the petitioner's coordination is below normal. She says that his lack of coordination can be improved by having him stand on one leg, which she says will improve his strength.

But demonstrating lack of coordination does not by itself justify approval of the requested therapy. Because the petitioner has previously received therapy, to receive more therapy he must demonstrate that the goals serve a functional purpose and that his current ability is not functional for his present way of life. Wis. Admin. Code, § DHS 107.17(3)(e)2 and 6. He can move about without difficulty and participate in recreational activities with his peers. He and his provider have not established a functional need for this portion of the therapy.

Moreover, he and ██████████ must demonstrate that this therapy will effectively treat his disability. The standardized testing indicates that he is "below average" in fine motor integration, manual dexterity, upper limb coordination, and manual coordination and that he is well below average in fine motor precision and fine manual control. Nothing in the record proves that having him stand on one leg will correct any of these deficits. Nor does the record establish that inadequate strength causes his poor coordination.

The petitioner and ██████████ must prove by the preponderance of the credible record that the request therapy is medically necessary. *Medically necessary* as it pertains here is a legal term whose definition was provided earlier in this decision. They have not met that burden. Therefore, I must uphold the Office of Inspector General's decision to deny the requested therapy.

CONCLUSIONS OF LAW

The Office of Inspector General correctly denied the petitioner's request for occupational therapy because he has not proven by the preponderance of the credible evidence that the request therapy is medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.



REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

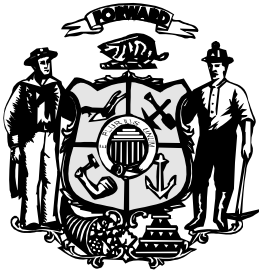
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of August, 2015

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 21, 2015.

Division of Health Care Access and Accountability
Attorney Michael Fairchild